Supreme Court, U.S.
FILED

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No.

In the Supreme Court of the United States

OVERNITE TRANSPORTATION COMPANY,

Petitioner,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO, et al.,

Respondents.

On Petition for Writ of Certiorari to the Appellate Court of Illinois, First District

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Illinois Appellate Court's decision to bar a state tort action because a charge was filed with the National Labor Relations Board violates the Supremacy Clause of the United States Constitution (Article VI, Clause 2) and contradicts prior decisions of this Court.

PARTIES TO THE PROCEEDINGS BELOW

In addition to the parties stated in the caption, Respondents include Teamsters Local Union Nos. 41, 120, 135, 414, 705, 710, 714 and 781, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, Phillip Young, Ronald Foster, Walter A. Lytle, Robert Kruezer, William Hogan, Jr., Robert Vickney, John Murphy, Dane Passo, Patrick Flynn, Joseph Bernstein, Kevin Moore, David Cameron, and John Does One Through 250.

CORPORATE DISCLOSURE STATEMENT

Petitioner, Overnite Transportation Company, makes this corporate disclosure statement pursuant to Supreme Court Rule 29.6:

Overnite Corporation owns 100% of the stock of Overnite Transportation Company. Overnite Corporation also owns Motor Cargo Industries, Inc. Overnite Corporation is wholly owned by Overnite Holding, Inc., and Overnite Holding, Inc. is wholly owned by Union Pacific Corporation.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the decision of the Illinois Appellate Court, First District, entered in the above-entitled case on June 19, 2002.

OPINIONS BELOW

The unreported decision of the Supreme Court of Illinois denying Petitioner's Petition for Appeal as a Matter of Right and, Alternatively, for Leave to Appeal appears in Appendix A, *infra*. (Pet. App. 1.) The opinion of the Illinois Appellate Court, First District, is reported at 332 Ill. App. 3d 69, 773 N.E.2d 26, and appears in Appendix B, *infra*. (Pet. App. 2-16.) The unreported final order of the Circuit Court of Cook County, Illinois appears in Appendix C, *infra*. (Pet. App. 17.)

JURISDICTION

The judgment of the Illinois Appellate Court, First District was entered on June 19, 2002. The Supreme Court of Illinois denied review on October 2, 2002. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

Since the proceeding draws into question the constitutionality of the Illinois Appellate Court's application of Section 2-619(a)(3) of the Illinois Code of Civil Procedure, 735 ILCS 5/2-619(a)(3), a statute of the State of Illinois affecting the public interest, and neither the State of Illinois nor any agency, officer, or employee thereof is a party, it is noted that 28 U.S.C. § 2403(b) may be applicable. Petitioner has served copies of this Petition on the Illinois Attorney General pursuant to Supreme Court Rule 29.4(c).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

Constitutional Provision

Article VI, Clause 2 of the Constitution of the United States provides:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the contrary notwithstanding."

Federal Statutory Provisions

Section 7 of the National Labor Relations Act ("NLRA") (29 U.S.C. § 157) provides:

> "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title."

Section 8(b)(1)(A) of the NLRA (29 U.S.C. § 158(b)(1)(A)) provides in relevant part as follows:

> (b) "It shall be an unfair labor practice for a labor organization or its agents—
>
> (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in Section [7] of this title. . . ."

Section 10 of the NLRA (29 U.S.C. § 160) provides in relevant part as follows:

> (b) "Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges. . . ."
>
> (c) ". . . If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice. . . ."
>
> * * *
>
> (f) "Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any United States court of appeals in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business. . . ."

State Code Provision

Section 2-619(a)(3) of the Illinois Code of Civil Procedure (735 ILCS 5/2-619(a)(3)) provides:

> "(a) Defendant may, within the time for pleading, file a motion for dismissal of the action or for other appropriate relief upon any of the following grounds. . .
>
> (3) that there is another action pending between the same parties for the same cause."

STATEMENT OF THE CASE

The Illinois Circuit and Appellate Courts held that a party's decision to exercise its right to seek relief under federal law, by filing an unfair labor practice charge with the National Labor Relations Board, precludes that party from maintaining a civil action under Illinois state law to recover state law tort damages.

A. THE FACTS

1. Petitioner's Complaint in State Court Alleges that Respondents Engaged in Tortious Activity Against Petitioner During a Labor Dispute.

Petitioner is a common carrier engaged in the interstate transportation of freight through a network of service centers, including a service center located in Bedford Park, Illinois. Respondents are the International Brotherhood of Teamsters ("IBT"), Phil Young ("Young"), its Director of Freight Operations, and several Teamster Local Unions affiliated with the IBT, including Local Union No. 705, which is the bargaining representative of certain employees at the Bedford Park service center. Petitioner's Complaint

also named as additional Defendants (herein Respondents) specified officers and agents of the Local Unions.

On July 14, 1999, Petitioner filed in the Circuit Court of Cook County, Illinois the Complaint, a copy of which is attached at Appendix D. (Pet. App. 18-32.) The Complaint alleged that Respondents planned to assemble together at Petitioner's Bedford Park facility and to there commit trespass, assault and battery. It further alleged that Respondents carried out that plan and that Petitioner was harmed thereby.

Petitioner's Complaint recited as background the labor dispute leading up to the events of June 15, 1999, and alleged three state-law causes of action arising from Respondents' actions that day, including: (1) unlawful trespass; (2) tortious interference with Petitioner's existing customer relationships and prospective relationships; and (3) conspiracy against Petitioner in order to either force Petitioner's employees to accept Teamster representation against their will and force Petitioner to accept a Teamsters-dictated contract, or put Petitioner out of business. (Pet. App. 18-32.) Each count requested monetary compensation for the damages inflicted upon Petitioner.

2. Petitioner Files an NLRB Charge.

On June 23, 1999, Petitioner filed a second amended unfair labor practice charge ("Charge") with the National Labor Relations Board ("NLRB").[1] A copy of this Charge is attached at Appendix E. (Pet. App. 33-34.) The Charge alleged that Respondents' June 15, 1999 trespass, assaults, batteries and threats restrained and coerced Petitioner's employees' rights under Section 7 and thereby violated Sec-

[1] On June 15 and 17, 1999, Petitioner filed an original and first amended charge, respectively.

tion 8(b)(1)(A) of the NLRA. 29 U.S.C. §§ 157, 158(b)(1)(A). Section 8(b)(1)(A) forbids labor organizations and their agents from restraining or coercing employees in the exercise of their federal rights under Section 7 to engage in or refrain from concerted or union activity. *Id.* Section 7 affords employers such as Petitioner no rights, and Section 8(b)(1)(A), therefore, does not prohibit restraint or coercion of any employers' rights. *Id.*

On November 18, 1999, the NLRB's Regional Director issued a Complaint ("NLRB Complaint") on behalf of the NLRB's General Counsel—the agency's statutorily established prosecutor—based on Petitioner's Charge. A copy of this NLRB Complaint is attached at Appendix F. (Pet. App. 35-39.) This NLRB Complaint alleged the same Section 8(b)(1)(A) allegations against the same parties as alleged in the Charge. Neither Petitioner's Charge nor the NLRB Complaint alleged any other unfair labor practices. Neither the Charge nor the NLRB Complaint named, in any capacity, any of the individual Defendants named in the civil Complaint.

B. THE STATE COURT DECISIONS

1. The Illinois Circuit Court Dismisses Petitioner's Tort Complaint Because Petitioner Previously Filed An NLRB Charge.

On October 25, 1999, Respondents moved in the trial court to stay or alternatively to dismiss the civil case, pursuant to Section 2-619(a)(3) of the Illinois Code of Civil Procedure. This provision permits a defendant to move for dismissal of an action if there is "another action pending between the same parties for the same cause." 735 ILCS 5/2-619(a)(3). Respondents' motion argued that Petitioner's filing of the Charge and issuance of the NLRB Complaint constituted "another action pending between the same par-

ties for the same cause" within the meaning of the Illinois Code of Civil Procedure.

In Petitioner's response brief, Petitioner addressed the constitutional issue raised by Respondents' argument:

> "4. Dismissal would violate the Supremacy Clause
>
> This Court independently must deny Defendants' Motion because it seeks to force Overnite to forego federal statutory relief. Under the United States Constitution, however, state laws cannot conflict or otherwise "stand [ ] as an obstacle" to the exercise of rights granted by federal law. *Brown v. Hotel Employees*, 468 U.S. 491, 501 (1984). The United States Supreme Court repeatedly has struck down such state laws as violative of the Supremacy Clause. U.S. CONST. art. VI, cl. 2. *See Nash v. Florida Indus. Comm'n*, 389 U.S. 235 (1967) (state statute denying benefits to persons who file NLRB charges impermissibly conflicts with federal statute). *See also Livadas v. Bradshaw*, 512 U.S. 107 (1994) (state policy could not force person to elect between NLRB right to collective bargaining and state-law right to unemployment benefits)." Response Brief of Petitioner in the Circuit Court of Cook County, p. 11-12.

Following oral argument on February 1, 2000, the Circuit Court of Cook County, Illinois held that the NLRB case was a "prior pending action between the same parties for essentially the same cause" and entered an Order dismissing the entire Complaint pursuant to Section 2-619(a)(3). (Pet. App. 17, 41.) Petitioner filed a timely Notice of Appeal from that judgment.

2. The Illinois Appellate Court Affirms the Circuit Court's Dismissal.

On appeal, Petitioner argued, among other things, that dismissal of its state law tort action violated the Supremacy Clause, and that dismissal was in conflict with prior decisions of the United States Supreme Court, including *Livadas v. Bradshaw*, 512 U.S. 107 (1994) and *Nash v. Florida Indus. Comm'n*, 389 U.S. 235 (1967). Following oral argument on February 27, 2002, a panel of the Illinois Appellate Court, First District (Justice Wolfson, dissenting), issued its judgment in this case, affirming the Circuit Court's dismissal of the case. (Pet. App. 2-16.)

With respect to the Section 2-619(a)(3) issue, the Appellate Court held that, "[w]hile Overnite was not restricted in its choice of forum, once it chose to pursue the NLRB proceeding first, it was bound by the relief offered in that forum, which does not include monetary compensation." (Pet. App. 13.) Confusingly, three pages later in the same opinion, the Court stated:

> Contrary to Overnite's assertion, the present case does not invoke the supremacy clause because the application of section 2-619(a)(3) does not frustrate the enforcement of the Act. Section 2-619(a)(3) does not require a party to forego or choose between pursuing a state charge and an NLRB complaint. Rather, section 2-619(a)(3) is designed to avoid duplicative litigation and is applied to carry out that purpose. Nothing in section 2-619(a)(3) prevents a party from pursuing various forms of relief. [citations omitted].
>
> Therefore, section 2-619(a)(3) does not run afoul of the supremacy clause.

(Pet. App. 15.) The Illinois Appellate Court held that the Circuit Court of Cook County did not act arbitrarily or ig-

nore recognized principles of law in ordering the dismissal of Petitioner's Complaint pursuant to Section 2-619(a)(3). (Pet. App. 14.) Petitioner disagreed with the Appellate Court's reasoning and decision, and thus sought review before the Supreme Court of Illinois.

3. The Supreme Court of Illinois Refuses to Consider the Issue.

On July 24, 2002, Petitioner filed a timely Petition for Appeal as a Matter of Right and, Alternatively, for Leave to Appeal with the Supreme Court of Illinois. In that Court, Petitioner renewed its Supremacy Clause argument, explaining why the Illinois Appellate Court's ruling was in conflict with both the United States Constitution and prior decisions of the United States Supreme Court. (Petitioner's Petition to the Supreme Court of Illinois, pp. 9-11.) On October 2, 2002, the Supreme Court of Illinois denied Petitioner's Petition without opinion. (Pet. App. 1.)

REASONS FOR GRANTING THE PETITION

THE ILLINOIS APPELLATE COURT'S APPLICATION OF SECTION 2-619(a)(3) OF THE ILLINOIS CODE OF CIVIL PROCEDURE VIOLATES THE SUPREMACY CLAUSE OF THE UNITED STATES CONSTITUTION AND DIRECTLY CONFLICTS WITH PRIOR DECISIONS OF THIS COURT.

More than 175 years ago, this Court held that the States may not "retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress." *McCulloch v. Maryland*, 17 U.S. 316, 436 (1819). That bedrock proposition flows from the Supremacy Clause of the United States Constitution, which states, in relevant part, that "[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall

be the supreme Law of the Land; and the Judges in every State shall be bound thereby. . . ." U.S. CONST., art. VI, cl. 2.

The decision of the Illinois Appellate Court in this case, however, does precisely what the Supremacy Clause and the principles of *McCulloch v. Maryland* forbid. By prohibiting Overnite from maintaining its state law action against the Defendants solely because Overnite also exercised its right under the National Labor Relations Act, 29 U.S.C. §§ 151, *et seq.*, to file an unfair labor practice charge related to the same conduct, the Illinois courts unconstitutionally impaired "the operations of the constitutional laws enacted by Congress."

Here, the Defendants' conduct on June 15, 1999 gave rise to two independent causes of action, one under Section 8(b)(1)(A) of the National Labor Relations Act, 29 U.S.C. § 158(b)(1)(A), the other under Illinois state law for trespass, tortious interference and conspiracy. The Illinois Appellate Court dismissed Overnite's state law claims pursuant to Section 2-619(a)(3) of the Illinois Code of Civil Procedure, 735 ILCS 5/2-619(a)(3), because Overnite exercised its right under federal law to file an unfair labor practice charge with the National Labor Relations Board to vindicate the federal labor law rights of its employees—rights for which state law provides no remedy—and because that charge was based on the same factual events as its state law complaint. Shutting the courthouse doors under these circumstances deprived Overnite of any remedy for the injuries it suffered simply because it sought to vindicate the federal rights of its employees. That deprivation is not only indefensible as a matter of rational interpretation of state law, but also unconstitutional.

In explaining its decision, the Illinois Appellate Court held that "once [Overnite] chose to pursue the NLRB proceeding first, it was bound by the relief offered in that

forum, which does not include monetary compensation." (Pet. App. 13.) In response to Overnite's Supremacy Clause argument, the Illinois Appellate Court defended its construction of Section 2-619(a)(3) by reciting that "[n]othing in section 2-619(a)(3) prevents a party from pursuing various forms of relief." (Pet. App. 15.)

These two statements cannot be logically reconciled. If, as the court held, Overnite is bound by its election to "pursue the NLRB proceeding first" and is thereby barred from pursuing its state law action, then it is indeed "prevent[ed] . . . from pursuing various forms of relief" by being denied access to the Illinois courts. The court's ruling requires that Overnite choose whether to pursue its federal right to file an unfair labor practice charge to enforce its employees' federal rights or its state right to bring a tort action in the Illinois courts to recover monetary damages for the injuries it sustained. Forcing this choice, however, undeniably discourages enforcement of the National Labor Relations Act, inasmuch as if Overnite chooses the latter, a potential violation of that Act goes uninvestigated and unremedied, and also frustrates Congress' clear intent that persons with information related to unfair labor practices be free to file such charges.[2] *NLRB v. Industrial Union of Marine &*

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[2] Section 10(a) of the Act empowers the National Labor Relations Board ("Board")—the federal administrative agency charged with enforcing the Act—to investigate and initiate proceedings against persons alleged to have committed unfair labor practices. 29 U.S.C. § 160(a). The Board, however, may not initiate those proceedings on its own; such proceedings can be initiated only by the filing of an unfair labor practice charge. 29 U.S.C. § 160(b); *NLRB v. Scrivener*, 405 U.S. 117, 121 (1972). The Act is a public statute, meaning that any person, including employers, may file unfair labor practice charges. *NLRB v. Indiana & Michigan Electric Co., et al.*, 318 U.S. 9, 18 (1943); *Operating Engineers Local 39 (Kaiser*

(continued...)

Shipbuilding Workers, 391 U.S. 418, 424 (1968) ("overriding public interest" favors "unimpeded access to the Board."). Illinois cannot meddle with those rights, created by Congress, by denying access to its courts simply because Overnite followed the federal statutory scheme for seeking relief under the National Labor Relations Act.

That Illinois may legislate conditions upon those who may maintain actions in its courts is without question. It is equally without question, however, that such legislation, and the decisions of Illinois courts interpreting that legislation, may not impair rights created by federal law. *Bethlehem Steel Co. v. New York State Labor Relations Board*, 330 U.S. 767, 773 (1947) ("the state may not so deal with matters left to its control as to 'stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress' ") (citation omitted). That is the essence of the Supremacy Clause. Here, by forcing Overnite to choose between exercising its federal right to file an unfair labor practice charge or access to the Illinois courts, the Illinois courts have directly burdened the enforcement of the National Labor Relations Act. In order to maintain its state law action, Overnite must forego its right to file an unfair labor practice charge, thereby leaving unremedied the rights of its employees to be free of union restraint and coercion. "The right to file charges is indispensable to the administration of the Act since the Board cannot initiate its own processes and no unfair labor practice complaint can issue in the absence of a valid charge." *Operating Engineers Local 138 (Charles S. Skura)*, 148 N.L.R.B. 679, 680 (1964), *cited with approval in NLRB v. Industrial Union of Marine & Shipbuilding Workers*, 391 U.S. 418, 424 (1968). The

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[2] (...continued)
Foundation), 268 N.L.R.B. 115, 116 (1983) ("The simple fact is that anyone for any reason may file charges with the Board.")

choice Illinois courts have now imposed on employers—and *a fortiori* on employees and unions as well—compromises enforcement of the Act in that it permits a potential violation to go unredressed.

The United States Supreme Court sustained a similar Supremacy Clause challenge to a Florida law over 30 years ago. In *Nash v. Florida Indus. Comm'n*, 389 U.S. 235 (1967), the Florida Industrial Commission ruled that, pursuant to a Florida statute that denied unemployment compensation to employees involved in a labor dispute, an unemployed person was not entitled to continue receiving compensation after filing an unfair labor practice charge with the NLRB. Applying the Supremacy Clause, this Court held that the Florida law as applied was invalid because it forced the employee to make a choice between receiving state unemployment compensation benefits and exercising a right under federal law to file an unfair labor practice charge. *Nash*, 389 U.S. at 239. The Court explained that states cannot "frustrate the purpose of Congress to leave people free to make charges of unfair labor practices to the Board." *Id.*

Likewise, in *Livadas v. Bradshaw*, 512 U.S. 107 (1994), this Court struck down a California state court decision because it forced an employee to choose between state law rights and federal labor law rights. 512 U.S. at 117. In reaffirming *Nash*, the Court stated, "[a] state rule predicating benefits on refraining from conduct protected by federal labor law poses special dangers of interference with congressional purpose." *Id.* at 116. *See also Brown v. Hotel & Restaurant Employees & Bartenders*, 468 U.S. 491, 501 (1984) (state law that interferes with protected rights under the Act "creates an actual conflict and is pre-empted by direct operation of the Supremacy Clause.").

Overnite's Supremacy Clause argument also finds support in the legislative history of the Taft-Hartley amend-

ments to the National Labor Relations Act.[3] During debate on the Senate floor, a question was raised as to why certain acts by labor organizations that would constitute violations of state law also should be deemed violations of federal labor law. Senator Pepper argued that doing so was unnecessary "because the citizens of the country are still protected by the law of the land against coercion from other citizens or organizations." 93 Cong. Rec. 4145 (daily ed. April 25, 1947) (statement of Sen. Pepper). Senator Taft, co-author of the amendments, responded:

> There are plenty of methods of coercion short of actual violence. So that in this section [referring to Section 8(b)(1)(A)] there is no duplication whatever. But suppose there is duplication in the extreme cases; suppose there is a threat of violence constituting violation of the law of the State. Why should it not be an unfair labor practice? It is on the part of the employer. If an employer proceeds to use violence, as employers once did, if they use the goon-squad tactics labor unions are permitted to use—and they once did—if they threaten men with physical violence if they join a union, they are

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[3] In 1947, Congress enacted the Taft-Hartley amendments to the National Labor Relations Act. Taft-Hartley Act of 1947, 61 Stat. 136, Pub. L. No. 80-101 (1947). Prior to these amendments, only employers could commit unfair labor practices. The Taft-Hartley amendments "recognized that labor organizations also might commit unfair labor practices to the detriment of employees," and made certain union practices unlawful. *United Auto., Aircraft and Agr. Implement Workers of America v. Wisconsin Employment Relations Bd.*, 351 U.S. 266, 272 (1956). One of these amendments was a provision, contained at 29 U.S.C. § 158(b)(1)(A), that made it an unfair labor practice for a labor organization or its agents to restrain or coerce employees in the exercise of those rights guaranteed by Section 7 of the Act, 29 U.S.C. § 157.

> subject to State law, and they are also subject to be proceeded against for violating the National Labor Relations Act. There is no reason in the world why there should not be two remedies for an act of that kind.

Id. (statement of Sen. Taft). These comments make clear that it was never Congress' intent that a party whose both federal and state rights have been affected be limited to pursuing remedies in only one forum. Consider the consequences of such an interpretation—that if a party files an NLRB charge, he, she or it may not seek any state civil remedy whenever the events that give rise to a state claim arise from the same facts and circumstances as those involved in the NLRB charge. Such an interpretation could lead to disastrous, certainly unintended consequences. For example, rather than simple trespass and interference with property and business rights, suppose the Defendants here had set fire to Overnite's property, burning down Overnite's multi-million dollar Bedford Park facility. If it occurred in the presence of employees, such arson most definitely would violate Section 8(b)(1)(A) of the National Labor Relations Act, and would properly be the subject of a charge with the Board to vindicate those employees' federal labor law rights. The same conduct, of course, also would violate state civil (and most likely criminal) law, and Overnite, as the property owner, could sue to recover money damages for the destruction of its property. Under the Illinois Appellate Court's decision, however, if Overnite filed that NLRB charge, for which the only remedy would be a cease and desist order directed to vindicating the rights of Overnite's employees, Overnite could not pursue damages for the complete loss of its facility.

The perversity of such a result, however, has been recognized by this Court. Indeed, this Court has addressed specifically the incompleteness of the remedial scheme under federal labor law, and the interplay between that

limited scheme and the more comprehensive relief available under state law. In *United Const. Workers, Affiliated with United Mine Workers of America v. Laburnum Const. Corp.*, 347 U.S. 656 (1954), this Court held that the National Labor Relations Act did not preempt states from enforcing state laws relating to conduct that also constitutes an unfair labor practice. The Court noted that where "Congress has not prescribed procedure for dealing with the consequences of tortious conduct already committed, there is no ground for concluding that existing criminal penalties or liabilities for tortious conduct have been eliminated." 347 U.S. at 665. Here, the Act's remedial scheme does not allow for monetary damages for trespass, property damage, and other damages that Defendants' conduct inflicted on Overnite. Thus, if Illinois refuses to grant Overnite access to its courts to seek that relief, it will be without a remedy. The Court in *Laburnum* rejected such an outcome:

> If Virginia is denied jurisdiction in this case, it will mean that where the federal preventive administrative procedures are impotent or inadequate, the offenders, by coercion of the type found here, may destroy property without liability for the damage done. If petitioners were unorganized private persons, conducting themselves as petitioners did here, Virginia would have had undoubted jurisdiction of this action against them. The fact that petitioners are labor organizations, with no contractual relationship with respondent or its employees, provides no reasonable basis for a different conclusion.

347 U.S. at 669.

It is no answer for the Illinois courts to say that they may as a matter of state law protect their courthouses from multiple actions arising from the same events. Overnite brought only a single action in an Illinois court, and that action was barred simply because Overnite had filed an

unfair labor practice charge in a federal administrative forum. However strong Illinois' interest in keeping its courthouses uncluttered, it has no such interest when the other action is a charge before a federal administrative agency, and it cannot advance any interest it has by burdening the exercise of a federal right.

The Illinois Appellate Court's decision in this case directly conflicts with this Court's decisions in *Nash* and *Livadas* and violates the Constitution's Supremacy Clause. If the Appellate Court's decision is not reversed, Overnite and other Illinois employers, as well as employees and unions, will be forced to choose between pursuing state law remedies or federal NLRB charges. They predictably will be deterred from pursuing those federal charges, because those charges cannot provide monetary relief for personal injuries or property damage, in order to pursue state law claims, which do provide monetary compensation to injured plaintiffs. Forcing employers (and injured employees) to make such a choice is unconstitutional, as it frustrates Congress' intention that "all persons with information about [unfair labor] practices [ ] be completely free from coercion against reporting them to the Board."[4] *Nash*, 389 U.S. at 238.

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[4] Inasmuch as the issues in this case impact the rights of Illinois employers, employees and unions to file charges with the Board, and thereby impact the Board's ability to enforce the Act, Overnite respectfully suggests that the Court seek the position of the National Labor Relations Board through a request to the Solicitor General that the Government submit an *amicus* brief on the issue raised in Overnite's petition for writ of *certiorari*.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Honorable Court grant this Petition for Writ of Certiorari.

Respectfully submitted,

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Attorneys for Petitioner

Dated: December 27, 2002

APPENDIX

APPENDIX A

Filed: October 2, 2002
Supreme Court of Illinois
Springfield, Illinois

No. 94400

STATE OF ILLINOIS

IN SUPREME COURT

Overnite Transportation Company,
Petitioner,

vs.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, et al., etc.,
Respondents.

Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for appeal as a matter of right or leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on October 24, 2002.

APPENDIX B

Filed: June 19, 2002
Illinois Appellate Court, First District, Third Division
Chicago, Illinois

No. 1-00-0334

STATE OF ILLINOIS

APPELLATE COURT

Overnite Transportation Company,
Plaintiff-Appellant,

vs.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, and Teamsters Local Union Nos. 41, 120, 135, 414, 705, 710, 714 and 781, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, Phillip Young, Ronald Foster, Walter A. Lytle, Robert Kruezer, William Hogan, Jr., Robert Vickney, John Murphy, Dane Passo, Patrick Flynn, Joseph Bernstein, Kevin Moore, David Cameron, and John Does Through 250,
Defendants-Appellees.

PRESIDING JUSTICE HALL delivered the opinion of the court:

The plaintiff, Overnite Transportation Company (Overnite) filed a complaint seeking damages for trespass, tortious interference with existing and prospective business

relationships and civil conspiracy against the defendants, the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, Teamsters Local Union Numbers 41, 120, 135, 414, 705, 710, 714 and 781, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, certain named officers and agents and unknown individuals. The circuit court dismissed the suit pursuant to section 2-619(a)(3) of the Code of Civil Procedure (the Code) (735 ILCS 5/2-619(a)(3) (West 1998)). Overnite filed this timely appeal.

After the briefs were filed in this case, the defendant-appellees filed a motion requesting oral argument which we ordered taken with the case. Subsequently, this court allowed oral argument in this case. We therefore strike the motion requesting oral argument as moot. We now turn to the merits of this appeal.

On July 14, 1999, Overnite filed the instant complaint against the defendants in the circuit court of Cook County. It is not disputed that, prior to filing the complaint, on June 15, 1999, Overnite filed an unfair labor practice charge with the National Labor Relations Board (NLRB) based upon the same facts that it set forth in the complaint filed in this case. Other factual allegations pertinent to our review are taken from the complaint and are set forth below.

Overnite is a common carrier engaged in the interstate transportation of freight and maintains a freight service center in Bedford Park, Illinois. Beginning in the fall of 1994, the defendants engaged in efforts to organize Overnite's freight-handling employees and to gain collective bargaining agreements for various separate units of Overnite's employees. Sometime prior to June 14, 1999, the defendants conspired to commit various tortious and criminal acts against Overnite and its employees to force them to accept union representation and a Teamster contract. On

June 15, 1999, the defendants, some armed with axe handles disguised as picketing posters, arrived at Overnight's Bedford Park facility, where they forced their way into the facility, injured security persons and marched around the facility making obscene gestures and shouting obscenities and threats at Overnite employees who refused to support them. After some 20 to 30 minutes, the defendants left the facility but threatened to return and repeat their unlawful acts unless Overnite and its employees capitulated to their demands.

The defendants filed a motion to dismiss Overnite's complaint. Specifically, the defendants alleged that the complaint should be dismissed pursuant to section 2-619(a)(3) of the Code, which provides as follows:

> "(a) Defendant may, within the time for pleading, file a motion for dismissal of the action or for other appropriate relief upon any of the following grounds. ***
>
> ***
>
> (3) That there is another action pending between the same parties for the same cause." 735 ILCS 5/2-619(a)(3) (West 1998).

The sole issue on appeal is whether the circuit court erred in dismissing Overnite's complaint pursuant to section 2-619(a)(3).

I. Standard of Review

Generally, a court of review applies a *de novo* standard to a motion to dismiss because the motion does not require the trial court to weigh facts or determine credibility. *Hapag-Lloyd (America), Inc. v. Home Insurance Co.*, 312 Ill. App. 3d 1087, 1090, 729 N.E.2d 36, 39 (2000). However, when such a motion to dismiss is inherently procedural, such as

a section 2-619(a)(3) motion seeking dismissal because another action is pending between the parties or the same cause, the motion urges the trial court to weigh several factors to determine if it is appropriate for the action to proceed. *Hapag-Lloyd*, 312 Ill. App. 3d at 1090, 1096, 729 N.E.2d at 39, 43. Where the trial court has weighed the factors in determining whether to grant a dismissal or stay of the proceedings, the trial court's decision is reviewed under an abuse of discretion standard. See *Hapag-Lloyd*, 312 Ill. App. 3d at 1090-91, 729 N.E.2d at 39.

The record in this case reveals that the circuit court based its decision on the factors it believed that it was required to consider. Therefore, we will review the circuit court's decision under the abuse of discretion standard.[1]

II. Analysis

Section 2-619(a)(3) is designed to avoid duplicative litigation and is to be applied to carry out that purpose. *Kellerman v. MCI Telecommunications Corp.*, 112 Ill. 2d 428, 447, 493 N.E.2d 1045, 1053 (1986). Pursuant to section 2-619(a)(3), the defendant may move for a dismissal or stay of the action. *Kellerman*, 112 Ill. 2d at 447, 493 N.E.2d at 1053. It is the burden of every section 2-619(a)(3) movant to demonstrate through clear and convincing evidence that the two actions involve both the same parties and the same cause. *Hapag-Lloyd*, 312 Ill. App. 3d at 1091, 729 N.E.2d at 40.

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[1] The dissent favors a *de novo* standard, citing *Miller v. Thomas*, 275 Ill. App. 3d 779, 656 N.E.2d 89 (1995). However, in that case, the trial court's decision was based upon the pleadings without making any discretionary analysis or weighing of the evidence.

A. The NLRB Proceeding

Overnite begins by contending that the NLRB proceeding is not an "action" within the meaning of section 2-619(a)(3).

Previous cases have not addressed this precise issue. In fact, the Illinois Supreme Court has specifically declined to decide whether a proceeding before an administrative tribunal with the power to issue a final, binding and enforceable decision constitutes an "action" within the meaning of section 2-619(a)(3). *Tumminaro v. Tumminaro*, 198 Ill. App. 3d 686, 692, 556 N.E.2d 293, 297 (1990); see *Ransom v. Marrese*, 122 Ill. 2d 518, 530-31, 524 N.E.2d 555, 561 (1988).

In *Ransom*, our supreme court held that a proceeding before a medical review board did not qualify as a judicial proceeding, *i.e.*, its members were not judicial officers, no hearing or trial was conducted, and it did not render a decision or judgment on the merits. *Ransom*, 122 Ill. 2d at 529, 524 N.E.2d at 560.

The *Ransom* court noted that in *Cummings v. Iron Hustler Corp.*, 118 Ill. App. 3d 327, 454 N.E.2d 1078 (1983), the reviewing court had assumed, without expressly deciding, that a proceeding before the Illinois Human Rights Commission was an "action" under section 2-619(a)(3). The court then noted the analysis in the appellate opinion in *Ransom*[2] wherein the appellate court, in finding that the medical review board proceeding did not qualify as an "action," distinguished the *Cummings* decision on the basis that the administrative agency in that case was authorized to render final, binding decisions which were enforceable through a court order and that the proceedings before it

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[2] *Ransom v. Marrese*, 150 Ill. App. 3d 67, 71-72, 501 N.E.2d 702, 704-05 (1986).

were similar to a judicial proceeding. *Ransom*, 122 Ill. 2d at 529, 524 N.E.2d at 560.

Moreover, an agency is said to act in a judicial capacity when it provides: "'(1) representation by counsel, (2) pretrial discovery, (3) the opportunity to present memoranda of law, (4) examination and cross-examination at the hearing, (5) the opportunity to introduce exhibits, (6) the chance to object to evidence at the hearing, and (7) final findings of fact and conclusions of law.' [Citation.]" *Weing v. Lockheed Environmental Systems & Technologies Co.*, 312 Ill. App. 3d 236, 239-40, 726 N.E.2d 645, 648 (2000).

In an NLRB proceeding, when a complaint is issued based upon the filing of an unfair labor practices charge, the matter is first heard by an administrative law judge. All of the parties, including the administrative law judge, have the power to call, examine and cross-examine witnesses and introduce evidence into the record. 29 C.F.R. § 101.10 (1999). After the hearing, the administrative law judge prepares a decision, making findings of fact and conclusions of law, and recommends what action should be taken in the case. 29 C.F.R. § 101.11 (1999). The NLRB then reviews the entire record and issues its decision, either adopting, modifying or rejecting the findings of the administrative law judge. 29 C.F.R. § 101.12 (1999). In the event that the NLRB's order is not complied with, or the NLRB determines that it is advisable to implement the order with a court judgment or a party wishes to challenge the NLRB's decision, petition for such relief may be made to the appropriate federal court. C.F.R. § 101.14 (1999). Once an NLRB order has been enforced by a court judgment, the NLRB has the responsibility of obtaining compliance with that judgment. 29 C.F.R. § 101.15 (1999).

Based on the above, we are of the opinion that an NLRB proceeding is similar to a judicial proceeding.

Overnite argues that the *Ransom* court also refused to find the proceeding before the medical review board to be "an action" because of the delay in the review board's issuing of a decision. *Ransom*, 122 Ill. 2d at 530, 524 N.E.2d at 561 (proposed complaint was still pending after three years); see also *In re M.K.*, 284 Ill. App. 3d 449, 458, 672 N.E.2d 271, 277 (1996) (strongest argument against dismissing the state action under section 2-619(a)(3) was the lack of progress in the federal case).

Overnite asserts that it took five months for a complaint to be issued in the NLRB proceedings in this case and points to the number of time-absorbing procedural steps that must be taken before a final decision is reached.

There is no indication in *Ransom* that the court would find that a proceeding which in every other way qualified as a judicial proceeding was not an "action" for purposes of section 2-619(a)(3) merely on the basis of the amount of time it took to reach a final decision. The *Ransom* court specifically held that its construction of section 2-619(a)(3) "ensures that the controversy will be more speedily *and finally determined according to the substantive rights of the parties*. [Citation.]" (Emphasis added.) *Ransom*, 122 Ill. 2d at 530, 524 N.E.2d at 561. Therefore, the number of procedural steps in an NLRB proceeding does not make it any less a judicial proceeding.

Based upon the foregoing, we conclude that the NLRB proceeding is an action under section 2-619(a)(3).

B. The *Kellerman* Factors

Overnite contends that even if this court determines that the NLRB proceeding constitutes an "action" under section 2-619(a)(3), the circuit court abused its discretion in dismissing its complaint.

In *Kellerman*, our supreme court outlined four factors the court should consider in deciding whether a stay under section 2-619(a)(3) is warranted: comity; the prevention of multiplicity, vexation and harassment; the likelihood of obtaining complete relief in the foreign jurisdiction; and the *res judicata* effect of a foreign judgment in the local forum. *Kellerman*, 112 Ill. 2d at 447-48, 493 N.E.2d at 1053-54. Overnite maintains that none of those factors support the dismissal of its complaint in this case.

We observe, first, that this case involves a dismissal and not a stay. However, subsequent cases have extended the *Kellerman* factors to section 2-619(a)(3) dismissals. *Kapoor v. Fujisawa Pharmaceutical Co.*, 298 Ill. App. 3d 780, 789, 699 N.E.2d 1095, 1102 (1998). We further note that courts are not required to apply the *Kellerman* factors. *Kapoor*, 298 Ill. App. 3d at 789, 699 N.E.2d at 1102 (courts "should," not "must," consider them). In fact, not all four *Kellerman* factors necessarily apply to each section 2-619(a)(3) dismissal. *Kapoor*, 298 Ill. App. 3d at 789-90, 699 N.E.2d at 1102 (*res judicata* not a relevant consideration in the context of dismissal, as opposed to a stay, since after a dismissal, there is no remaining action to which *res judicata* principles can be applied).

This court has defined "comity" as "'giving respect to the laws and judicial decisions of other jurisdictions out of deference.' [Citation.]" *Hapag-Lloyd*, 312 Ill. App. 3d at 1096, 729 N.E.2d at 43. Since the inquiry does not focus on whether the causes of action are identical, if the two actions arose out of the same occurrence, the consideration of comity will not preclude a dismissal. *Kapoor*, 298 Ill. App. 3d at 790, 699 N.E.2d at 1102.

Overnite argues that maintaining both the NLRB action and its state complaint is neither a multiplicity of actions nor harassing to the defendants, since the focus of the NLRB action is relief for Overnite's employees while the

state action seeks compensatory damages for the damages suffered by Overnite. Overnite further argues that the NLRB action cannot afford it complete relief since the NLRB can only issue a cease and desist order in this type of case. See 29 U.S.C.S. § 160(c) (1992).

Two actions are for the same cause when the relief requested is based on substantially the same set of facts. *Village of Mapleton v. Cathy's Tap, Inc.*, 313 Ill. App. 3d 264, 266, 729 N.E.2d 854, 856 (2000). The crucial inquiry is whether the two actions arise out of the same transaction or occurrence, not whether the legal theory, issues, burden of proof or relief sought materially differs between the two actions. *Village of Mapleton*, 313 Ill. App. 3d at 266, 729 N.E.2d at 856. Furthermore, the purpose of the two actions need not be identical; rather, there need only be a substantial similarity of issues between them. *Village of Mapleton*, 313 Ill. App. 3d at 266, 729 N.E.2d at 856.

In the complaint issued by the NLRB in this case, the defendants were alleged to have engaged in mass picketing, trespassed on Overnite's property, inflicted injury on Overnite's security guards, damaged a vehicle belonging to an Overnite security guard and prohibited an Overnite employee from performing work by blocking his use of an Overnite vehicle. The complaint further alleged that these acts restrained and coerced Overnite's employees in violation of the National Labor Relations Act (Act) (29 U.S.C.S. § 151 *et seq.* (1992)).

The state court complaint filed in this case sought damages based upon the same conduct, *i.e.*, the acts of trespass and battery and, in addition, sought damages for alleged tortious interference with business relationship and civil conspiracy based upon additional factual allegations not set forth in the NLRB complaint.

In *Kellerman*, the plaintiffs filed a state action alleging violations of the Illinois consumer protection statutes, as

well as breach of contract and common law fraud. The trial court denied the defendants' motion to stay the state action due to the pendency of a federal class action suit. Subsequent to the trial court's denial of the stay, the federal district court dismissed the federal common law claims and referred the remaining claims to an administrative agency.

In affirming the denial of the stay, our supreme court stated as follows:

> "This subsequent action in the Federal court is of no consequence, because all of the reasons that the trial court originally found persuasive in denying the stay are just as applicable, if not more so, now. None of the counts remaining in the Federal action allege common law claims for fraud or breach of contract, or claims based on Illinois' deceptive trade and consumer fraud statutes, but relate only to whether defendant's failure to disclose its charges constitutes a violation of section 201(b) (47 U.S.C. sec. 201(b)) of the Communications Act. The issue of whether defendant's failure to disclose certain charges is 'unjust or unreasonable' under section 201(b) of the Communications Act has no relevance as to whether defendant's failure to disclose those charges constituted fraud, a breach of contract, or a violation of Illinois' statutes. While some of the same documentary evidence may be used in both cases, the lawsuits involve entirely different theories and litigation strategies." *Kellerman*, 112 Ill. 2d at 448, 493 N.E.2d at 1054.

In this case, the allegations in both actions arose from the same incident and are very similar. The focus of both actions is the punishment for the defendants' activities undertaken to unionize Overnite's employees. Therefore, unlike *Kellerman*, the issues of the NLRB complaint relate to the issues raised in the state complaint.

The dissent maintains that the trial court abused its discretion in dismissing the complaint because, at this stage of the proceedings, there is no way to know how quickly the NLRB will act and when it does act, whether it will provide complete relief to Overnite.

The fact that the NLRB action will not provide complete relief to Overnite does not, in and of itself, prevent dismissal of the action. In *Kapoor*, the court rejected the plaintiff's argument that dismissal was improper because he could not bring his state action in federal court either as a permissive or compulsive counterclaim. The court held that section 2-619(a)(3) was designed to prevent duplicative actions and that the central inquiry was " 'not whether the legal theories or the relief sought materially differs between the two actions.' [Citation.]" *Kapoor*, 298 Ill. App. 3d at 790, 699 N.E.2d at 1103; see *Katherine M. v. Ryder*, 254 Ill. App. 3d 479, 627 N.E.2d 42 (1993) (the fact that the plaintiffs were unable to assert their state law claims in federal court was irrelevant to the determination of a section 2-619(a)(3) dismissal).

Moreover, there is nothing in the record before us as to the status of the NLRB proceedings. Therefore, despite the dissent's concern, there is no basis in the record for concluding that there is or has been a lack of progress in the NLRB proceedings which would favor the denial of the dismissal motion in this case.

Finally, in exercising its discretion in ruling on a section 2-619(a)(3) motion, the court must weigh the prejudice to the nonmovant if the motion is granted against the policy of avoiding duplicative litigation. *Kapoor*, 298 Ill. App. 3d at 785-86, 699 N.E.2d at 1100. The only apparent prejudice to Overnite in this case is the inability to receive monetary compensation for the damage allegedly caused by the defendants.

While Overnite was not restricted in its choice of forum, once it chose to pursue the NLRB proceeding first, it was bound by the relief offered in that forum, which does not include monetary compensation. Yet, as we previously noted, Overnite's inability to secure monetary compensation is irrelevant for purposes of a section 2-619(a)(3) dismissal. Thus, any prejudice to Overnite resulting from its inability to receive monetary damages is both of its own making and irrelevant to the determination of the section 2-619(a)(3) motion in this case.

The dissent points to the allegations of the complaint alleging the acts of violence against the Overnite employees and asserts that Illinois residents have a substantial interest in how purported acts of labor violence are regulated. However, what Overnite seeks in its complaint is not regulation but monetary compensation, which benefits only Overnite. In the NLRB proceedings, the goal is to determine if such conduct constituted an unfair labor practice, and if it does, the NLRB can order a cease and desist order to prevent such conduct in the future. Such a determination benefits both Overnite and Illinois residents. Contrary to the dissent's view, Overnite will not be left without any remedy.

In this case, the circuit court, exercising its discretion, determined that in light of the pendency of the NLRB proceeding, dismissal of the state complaint was appropriate under section 2-619(a)(3). The record reflects that the circuit court made its decision after hearing arguments by both parties based on the *Kellerman* factors.

In maintaining that the circuit court abused its discretion by dismissing the complaint instead of ordering a stay pending the outcome of the NLRB proceeding, the dissent seemingly concedes that the *Kellerman* factors favored the defendants in this case. Therefore, the dissent's only real quarrel is with the form of relief chosen by the circuit court in this case. However, in this case, neither the defendants

nor Overnite requested a stay of the proceedings as either primary or alternative relief.

An abuse of discretion occurs, not when a reviewing court disagrees with a court's decision, but rather, when a reviewing court finds that a trial court "'"acted arbitrarily without the employment of conscientious judgment or, in view of all the circumstances, exceeded the bounds of reason and ignored recognized principles of law so that substantial prejudice resulted."' [Citation.]" *May v. Smithkline Beecham Clinical Laboratories, Inc.*, 304 Ill. App. 3d 2424, 246, 710 N.E.2d 460, 463-64 (1999). What this court would have decided had the question of the appropriate relief been presented to us initially is therefore irrelevant.

Based upon our review of the relevant factors, we cannot say that the circuit court acted arbitrarily or ignored recognized principles of law in ordering the dismissal of Overnite's complaint pursuant to section 2-619(a)(3) in this case.

Finally, Overnite contends that the circuit court's dismissal of its complaint pursuant to section 2-619(a)(3) violates the supremacy clause of the United States Constitution. U.S. Const. art. VI, §2. However, in the cases relied on by Overnite, the supremacy clause was invoked against state laws that frustrated the ability of people to make charges of unfair labor practices to the NLRB or forced them to chose between state benefits and pursuit of an NLRB action. See *Livadas v. Bradshaw*, 512 U.S. 107, 129 L. Ed. 2d 93, 114 S. Ct. 2068 (1994); *Nash v. Florida Industrial Comm'n*, 389 U.S. 235, 19 L. Ed. 2d 438, 88 S. Ct. 362 (1967).

In *Nash*, the petitioner was disqualified from receiving compensation solely for filing an unfair labor practice charge. In *Livadas*, the state labor commissioner refused to enforce the petitioner's state right to back pay because she was covered under a collective bargaining agreement. In

both cases, the Supreme Court held that Congress did not intend for employees to be forced to chose between having state law rights and exercising their rights to pursue an unfair labor claim or to enter into a collective bargaining agreement with an arbitration clause. See *Livadas*, 512 U.S. at 117, 129 L. Ed. 2d at 105-06, 114 S. Ct. at 2074-75.

Contrary to Overnite's assertion, the present case does not invoke the supremacy clause because the application of section 2-619(a)(3) does not frustrate the enforcement of the Act. Section 2-619(a)(3) does not require a party to forego or choose between pursuing a state charge and an NLRB complaint. Rather, section 2-619(a)(3) is designed to avoid duplicative litigation and is applied to carry out that purpose. *Kellerman*, 112 Ill. 2d at 447, 493 N.E.2d at 1053. Nothing in section 2-619(a)(3) prevents a party from pursuing various forms of relief. In fact, a court may allow two actions to be maintained at the same time even though they are based upon the same facts. *May*, 304 Ill. App. 3d at 248, 710 N.E.2d at 464 (multiple actions in different jurisdictions, arising out of the same operative facts, may be maintained where the circuit court, in a sound exercise of discretion, determines that more than one action should proceed); see *Kellerman*, 112 Ill. 2d at 448, 493 N.E.2d at 1054 (lawsuits involved entirely different theories and litigations strategies).

Therefore, section 2-619(a)(3) does not run afoul of the supremacy clause.

We conclude, therefore, that the circuit court did not abuse its discretion when it dismissed Overnite's complaint pursuant to section 2-619(a)(3). Deciding this case as we do, we need not decide whether that portion of Overnite's brief dealing with the issue of federal preemption should be stricken.

The judgment of the circuit court of Cook County is affirmed.

Affirmed.

CERDA J., concurs.

JUSTICE WOLFSON, dissenting:

I agree that the NLRB proceeding is an action under section 2-619(a)(3). Although I would be inclined to say we should apply a *de novo* standard to a section 2-619(a)(3) dismissal that did not require the trial court to weigh facts or determine credibility (*Miller v. Thomas*, 275 Ill. App. 3d 779, 786-87 (1995)), I will use the majority's abuse of discretion review of the dismissal.

I respectfully dissent because I believe the trial court abused its discretion when it dismissed this action. It should have granted a stay, pending the playing out of the NLRB case.

There is no way to know, at this point, how long the NLRB will take before it does anything meaningful in this case. Nor can we know whether it will provide complete relief to the parties, a factor the trial judge should consider. See *Hapag-Lloyd (America), Inc. v. Home Insurance Co.*, 312 Ill. App. 3d 1087, 1097 (2000) ("Another discretionary factor that should have been taken into account was whether the Federal Action could provide complete relief to all of the parties").

Overnite has made serious allegations in this lawsuit. Illinois residents have a substantial interest in how purported acts of labor violence are litigated. It could be the NLRB will do all that should be done, but we cannot know that at this point. If there is no full and fair resolution of the issues raised here and at the NLRB, Overnite will be left without a remedy. That would be no service to the administration of justice in this state. Staying the Illinois proceeding would do no harm and would protect the rights of the parties in a lawsuit that raises matters of public interest.

APPENDIX C

Filed: February 1, 2000
Aurelia Pucinski, Clerk
Circuit Court of Cook County, Illinois
Chicago, Illinois

STATE OF ILLINOIS

IN THE CIRCUIT COURT OF

COOK COUNTY, ILLINOIS

Overnite Transportation Co.,
Plaintiff,

v. No. 99 L 07779

International Brotherhood of
Teamsters, et al.,
Defendants.

ORDER

This cause coming on to be heard upon Defendants' Motion to Dismiss and the parties having appeared, submitted memoranda and argued to the Court, and the Court being duly and fully advised in the premises, hereby orders that Defendants' Motion to Dismiss, pursuant to Rule 2-619(a)(3), is granted for the reasons stated in open court and the Complaint is dismissed in its entirety. The Court further finds that there is no just reason to delay appeal and this constitutes a final order.

ENTER: /s/ Judge Diane J. Larsen
February 1, 2000
Circuit Court - 1771

APPENDIX D

Filed: July 14, 1999
Aurelia Pucinski, Clerk
Circuit Court of Cook County, Illinois
Chicago, Illinois

STATE OF ILLINOIS

IN THE CIRCUIT COURT OF

COOK COUNTY, ILLINOIS

OVERNITE TRANSPORTATION COMPANY,
Plaintiff,

vs. No. 99 L 07779

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN and HELPERS OF AMERICA, AFL-CIO, and TEAMSTERS LOCAL UNION NOS. 41, 120, 135, 414 705, 710, 714 and 781, Affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN and HELPERS OF AMERICA, AFL-CIO, PHILLIP YOUNG, RONALD FOSTER, WALTER A. LYTLE, ROBERT KRUEZER, WILLIAM HOGAN JR., ROBERT VICKNEY, JOHN MURPHY, DANE PASSO, PATRICK FLYNN, JOSEPH BERNSTEIN, KEVIN MOORE, DAVID CAMERON, and JOHN DOES THROUGH 250.
Defendants.

COMPLAINT

Plaintiff OVERNITE TRANSPORTATION COMPANY (hereinafter "Overnite"), by and through its attorneys,

MATKOV, SALZMAN, MADOFF & GUNN, states its complaint against Defendants as follows:

The Parties

1. Overnite is a Virginia corporation, and is authorized to do business in the State of Illinois. Overnite is a common carrier engaged in the interstate transportation of freight.

2. Overnite maintains a freight Service Center at 6633 West 75th Street, Bedford Park, Cook County, Illinois (hereinafter the "Bedford Park Service Center").

3. Defendant International Brotherhood of Teamsters Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (hereinafter, "the International") is a voluntary, unincorporated association commonly known as a labor union. The International maintains an office at 25 Louisiana Avenue, NW, Washington, DC 20001.

4. Defendant Teamsters Local Union No. 705 (hereinafter "Teamsters Local 705") is a voluntary, unincorporated association commonly known as a labor union, and by and through its duly authorized officers and agents is, and at all times mentioned herein was, the exclusive bargaining agent representing the City Drivers employed by Overnite at the Bedford Park Service Center. Teamsters Local 705 engages in such activities in Cook County, Illinois, and maintains an office at 1645 West Jackson Boulevard, Chicago, Illinois 60612.

5. Defendant Teamsters Local Union No. 710 (hereinafter "Teamsters Local 710") is a voluntary, unincorporated association commonly known as a labor union. Teamsters Local 710 maintains an office at 4217 South Halsted Street, Chicago, Illinois 60609.

6. Defendant Teamsters Local Union No. 41 (hereinafter "Teamsters Local 41") is a voluntary, unincorporated as-

sociation commonly known as a labor union, and by and through its duly authorized officers and agents is, and at all times mentioned herein was, the exclusive bargaining agent representing certain employees employed by Overnite at 3600-3800 Kansas Avenue, Kansas City, Missouri. Teamsters Local 41 maintains an office at 4501 Van Brunt Blvd., Kansas City, Missouri, 64130.

7. Defendant Teamsters Local Union No. 120 (hereinafter "Teamsters Local 120") is a voluntary, unincorporated association commonly known as a labor union, and by and through its duly authorized officers and agents is, and at all times mentioned herein was, the exclusive bargaining agent representing certain persons employed by Overnite at its Blaine, Minnesota Service Center. Teamsters Local 120 maintains an office at 2635 University Avenue West, Suite 120, St. Paul, Minnesota, 55114.

8. Defendant Teamsters Local Union No. 135 (hereinafter "Teamsters Local 135") is a voluntary, unincorporated association commonly known as a labor union, and by and through its duly authorized officers and agents is, and at all times mentioned herein was, the exclusive bargaining agent representing certain people employed by Overnite. Teamsters Local 135 maintains an office at 1233 Shelby Street, Indianapolis, Indiana 46203.

9. Defendant Teamsters Local Union No. 414 (hereinafter "Teamsters Local 414") is a voluntary, unincorporated association commonly known as a labor union. Teamsters Local 414 maintains an office at 2644 Cass St., Fort Wayne, Indiana, 46808.

10. Defendant Teamsters Local Union No. 714 (hereinafter "Teamsters Local 714") is a voluntary, unincorporated association commonly known as a labor union. Teamsters Local 714 maintains an office at 6815 Roosevelt Road, Berwyn, Illinois 60402-1071.

11. Defendant Teamsters Local Union No. 781 (hereinafter "Teamsters Local 781") is a voluntary, unincorporated association commonly known as a labor union. Teamsters Local 781 maintains an office at 320 South Ashland Avenue, Chicago, Illinois 60607-2704.

12. Defendant Phil Young (hereinafter "Young") is the International's Director of Freight Operations and is the President of Teamsters Local 41. Various Local Teamster organizations have appointed him to lead a coordinated national bargaining committee to negotiate a contract with Overnite on behalf of separate units of Overnite employees. He is sued individually and in his capacity as agent of the International and of Teamsters Local 41.

13. Defendant Ronald Foster (hereinafter "Foster") is Secretary Treasurer of Teamsters Local 135. Various Local Teamster organizations have appointed him to participate in a coordinated national bargaining committee to negotiate a contract with Overnite on behalf of separate units of Overnite employees. He is sued individually and in his capacity as agent of Teamsters Local 135.

14. Defendant Walter A. Lytle (hereinafter "Lytle") is Secretary / Treasurer of Teamsters Local 414. Various Local Teamster organizations have appointed him to participate in a coordinated national bargaining committee to negotiate a contract with Overnite on behalf of separate units of Overnite employees. He is sued individually and in his capacity as agent of the International and Teamsters Local 414.

15. Defendant Robert Kruezer (hereinafter "Kruezer") is an Organizer for the International. He is sued individually and in his capacity as agent of the International.

16. Defendant William Hogan, Jr. (hereinafter "Hogan") is an Organizer for Teamsters Local 714. He is sued individually and in his capacity as agent of Teamsters Local 714.

17. Defendant Robert Vickney (hereinafter "Vickney") is a Business Agent of Teamsters Local 120. He is sued individually and in his capacity as agent of Teamsters Local 120.

18. Defendant John Murphy (hereinafter "Murphy") is the International's Chief Organizer. He is sued individually and in his capacity as agent of the International.

19. Defendant Dane Passo (hereinafter "Passo") is Assistant to the General President of the International. He is sued individually and in his capacity as agent of the International.

20. Defendant Patrick Flynn (hereinafter "Flynn") is President of Teamsters Local 710. Various Local Teamster organizations have appointed him to participate in a coordinated national bargaining committee to negotiate a contract with Overnite on behalf of separate units of Overnite employees. He is sued individually and in his capacity as agent of the International and of Teamsters Local 710.

21. Defendant Joseph Bernstein (hereinafter "Bernstein") is President of Teamsters Local 781. He is sued individually and in his capacity as agent of Teamsters Local 781.

22. Defendant Kevin Moore (hereinafter "Moore") is an International Representative. He is sued individually and in his capacity as agent of the International.

23. Defendant David Cameron (hereinafter "Cameron") is Communications Coordinator of the International. He is sued individually and in his capacity as agent of the International.

Jurisdiction and Venue

24. This Court has jurisdiction over all named Defendants pursuant to 735 ILCS 5/2-209. This case is brought

under the common law of the State of Illinois based upon the tortious and criminal conduct in which Defendants engaged in Bedford Park, Illinois.

25. Venue in this Court is proper pursuant to 775 ILCS 5/2-101 because the events out of which this case arises occurred, in part, in Bedford Park, Cook County, Illinois.

Background Facts

26. Beginning in the fall of 1994 and continuing until the present, the International Brotherhood of Teamsters and various of its affiliated locals (including Teamsters Locals 41, 120, 134, 414, 705, 710, 714 and 781) have been attempting to organize Overnite's freight-handling employees and to gain collective bargaining agreements for various separate units of Overnite employees.

27. On February 23, 1996, various persons affiliated with and/or operating under the direction of The International and its affiliated Local No. 100 forcibly trespassed on the property of Overnite's Cincinnati, Ohio Service Center. They sought unlawfully to coerce Overnite and its employees into accepting Teamster representation. To accomplish their objective, they trespassed on Overnite's property, forced their way onto Overnite's loading dock, occupied Overnite's service center office building, and threatened Overnite managers, supervisors and employees. The Teamsters and their agents refused to leave even when directed to do so by the police, until they decided it was in their interest to depart.

28. Following those unlawful acts, Overnite filed an unfair labor practice charge against the International and Teamsters Local Union No. 100 in Cincinnati. The Teamsters signed an informal settlement agreement (Case No. 9-CB-9302-1 and -2) with the National Labor Relations Board pledging not to engage in similar unlawful conduct

in the future. Pursuant to that agreement, the International signed a Notice posting to employees pledging not to engage in such unlawful acts in the future.

29. On June 29, 1998, Teamsters Local 41, then led by Defendant Young, struck at Overnite's Kansas City, Kansas Service Center and formed a picket line outside the Service Center property. Agents of the International including Defendant Kruezer were also present on that picket line. At that time, the Teamsters, through its agents, engaged in various criminal and wrongful acts against Overnite and its employees. Among other things, they threatened to kill Overnite employees who wanted to work, disconnected the break lines of Overnite trucks, followed and attempted to force Overnite trucks off the road, repeatedly struck Overnite trucks with clubs and rocks, and vandalized the vehicles driven by Overnite employees who tried to come to work.

30. On May 1, 1999, the International inaugurated James P. Hoffa as its General President.

31. Shortly after his inauguration, Hoffa appointed Phil Young Director of Freight Operations for the International. The Freight Operations Division is responsible for representing the Teamsters in dealings with all freight carriers, including Overnite. Hoffa also appointed Young to head the Teamsters coordinated bargaining committee, which represents various separate units of Overnite employees.

32. On or about early May, 1999, Hoffa and Young held a meeting in Chicago of numerous Teamsters Locals to discuss how to force Teamsters representation and a Teamster contract on Overnite and its employees. On information and belief, the International and the Locals (by and through their agents) agreed to use as many as 100,000 employees working for other Teamsters-represented carriers to coerce Overnite and its employees into accepting representation and whatever contract the Teamsters were willing to offer.

33. The International and its affiliate Locals began sending letters to Overnite's customers telling them that Overnite had labor troubles and that thousands of Teamsters from outside the Company would force Overnite to capitulate to the Teamsters' demands. The International also began sending e-mails to Overnite's customers suggesting that labor unrest could delay Overnite's delivery services and disrupt the customers' businesses.

34. Various spokesmen for The International and its affiliated locals began stating publicly and privately that Overnite would either be a Teamster company by the end of the year or the Teamsters would force Overnite to close its doors.

35. Either at its May meeting or at some other point prior to June 14, 1999, the International and its affiliated locals (including Teamsters Locals 41, 120, 135, 414, 705, 710, 714 and 781) entered into a conspiracy to commit various tortious and criminal acts against Overnite and its employees in order to coerce Overnite and its employees to accept representation and a Teamster contract.

36. Prior to June 14, 1999, Young and various other officers, agents, and members of the International and its affiliated locals (including Locals 41, 120, 135, 313, 705, 710, 714 and 781) agreed to come to Chicago on or about June 14, 1999. One of the purposes of their visit was to commit tortious and criminal acts against Overnite and/or its employees in furtherance of their conspiracy.

37. On June 14, 1999, the International sent copies of a press release to various persons not known to Overnite but known to Defendants pledging that Hoffa and other agents of the International and/or Defendant Locals planned to visit Overnite's Bedford Park Service Center the following morning.

38. In that release, the International expressed its intention to commit trespass on Overnite's property to coerce

Overnite and its employees into capitulating to the Teamsters' representation and contract demands.

39. In order to ensure that a large group of Teamsters would appear at Overnite's Bedford Park Service Center to participate in the trespass and other criminal acts, the International and/or Local Defendants rented or otherwise arranged for four buses and numerous vehicles owned by various of the Defendants, including agents of Teamsters Local 705, to transport Teamster members to the Bedford Park Service Center.

40. Defendants planned in advance to commit trespass and, if necessary, assault and/or battery to further their objectives at Overnite's Bedford Park Service Center on June 15, 1999. For example, various Teamsters, including Kevin Moore, and others not known to Overnite but known to Defendants, arrived at the Bedford Park Facility carrying Pick axe handles. On information and belief, they planned to intimidate Overnite and its employees and, if necessary, to force their way onto Overnite's property. Defendants disguised all or many of these axe handles by fastening thereto pre-printed picket posters provided by the International and/or one or more of Defendant Locals.

41. On the morning of June 15, the Defendants, accompanied by approximately 200 additional officers, agents and/or members of the International and Defendant Locals arrived at Overnite's Bedford Park facility. The names and addresses of these additional individuals are not presently known to Overnite but on information and belief are known to the various Defendants named herein. They were accompanied by Teamsters-affiliated photographers and videographers who took numerous pictures and videotapes of the events that followed. They were also accompanied by members of the media whom the International and/or other Defendants had contacted and invited to bear witness to their acts of tortious and criminal misconduct. Defendants

intended to use these photographs, films and media reports to frighten, intimidate and/or drive away Overnite's employees and current and prospective customers.

42. At approximately 6:50 a.m., on June 15, 1999, Defendants closed off the only road leading to Overnite's Bedford Park Service Center with the intention of blocking ingress to and egress from the Service Center and thus shutting down Overnite's operations. When an Overnite security guard in a truck attempted to pass through the crowd, an agent of the International and/or Local defendants struck the truck with an axe handle or other object, breaking off the truck's passenger side mirror.

43. At approximately 7:00 a.m., on June 15, 1999, Defendants, led by Young and various other officers and agents of the Defendants, began marching toward Overnite's Bedford Park Service Center gate. Overnite has prominently marked the Service Center's property line with a yellow line and posted the property with large "No Trespassing" signs. Notwithstanding these markers, Young led the crowd across the property line and up to Overnite's main gate.

44. Several security guards retained by Overnite met Defendants at the gate. Young demanded admittance repeatedly. The guards repeatedly told Young and the other Defendants that they could not enter Overnite's property. By having partially closed the gate and lining up shoulder to shoulder, the guards also attempted to block Defendants from advancing onto Overnite's property. One of the security guards held up both hands and shook his head "no" in order to emphasize that Defendants were being denied permission to come onto Overnite's property.

45. As they had planned and announced, Young and the other Defendants refused to stop at the gate even though security guards stood in their way and refused them entry. In order to clear a path for the crowd, Young and various

others not known to Overnite but known to Defendants began forcing their way through the gate by shoving and punching the security guards retained by Overnite to protect the property. When the security guards pulled back and made another attempt to stanch Defendants' advance, Young shoved one security guard and slugged another, sending him to the ground, whereupon one of the Defendants or a member of the mob Defendants were leading stepped on him.

46. Once past the guards, Young led the entire mob up to the front door of the main office building. Several security guards blocked the door of the building to prevent Young and the other Teamsters from entering.

47. Overnite management confronted Young and the crowd at the building. They reminded them that they were on private property without permission, and asked them to leave. Overnite management also attempted to hand Young a copy of a letter previously sent to the Teamsters' coordinated bargaining committee pointedly warning the Defendants not to trespass on Overnite property and to make appointments if they wished to visit. Young ignored the request and shouted and screamed at the Overnite managers in a threatening and combative manner.

48. Young, the other Defendants and the mob they were leading then began parading around Overnite's property and moving further from the gate. During their march, they made obscene gestures and shouted obscenities and threats at Overnite employees who refused to support them.

49. After approximately 20 to 30 minutes, the Teamsters marched off the property.

50. After leaving the property, the crowd assembled on the middle of the road leading to the Service Center. Young, William Hogan and other Defendants continued to shout threats to use whatever means necessary in order to force

Overnite and its employees to accept Teamsters representation and a Teamsters contract. In this regard, Defendant John Murphy, a spokesperson for the Teamsters, bluntly stated that Overnite would either be a Teamsters-represented company by the end of the year or "there would be no more" Overnite.

51. In addition, Young and others not known to Overnite but known to the Defendants threatened to come back to the Bedford Park Service Center and repeat their unlawful acts if Overnite and its employees did not capitulate to their demands.

52. Overnite competes vigorously with other companies that are also engaged in the business of interstate freight transportation. Overnite has developed valuable goodwill and customer relationships over many years as a result of its prompt, efficient and satisfactory service to its customers. The Teamsters' actions and threats were intended to damage and did indeed damage that goodwill and those customer relationships by making customers and prospective customers fear that the Teamsters would carry out their threats to put Overnite out of business through acts of trespass, assault, battery, and threats to commit these and other acts.

COUNT I -- TRESPASS

53. Overnite hereby realleges and incorporates by reference Complaint Paragraphs 1 through 52.

54. All of the actions of the Defendants alleged above wrongfully deprived Overnite of the rightful and lawful use of its Bedford Park Service Center and the rightful and lawful free and unhampered ingress to and egress from the Service Center, and thus constitute an unlawful trespass.

55. As a direct and proximate result of Defendants's trespass, Overnite has suffered and, if the acts are re-

peated, will continue to suffer, damage and injury by losing the exclusive and unfettered use of its Bedford Park Service Center, and has suffered compensable losses in an amount to be determined at trial.

COUNT II – TORTIOUS INTERFERENCE WITH EXISTING AND PROSPECTIVE BUSINESS RELATIONSHIPS

56. Overnite hereby realleges and incorporates by reference Complaint Paragraphs 1 through 55.

57. Overnite competes vigorously with other companies that are also engaged in the business of interstate freight transportation. Overnite has developed valuable goodwill and customer relationships over many years as a result of its prompt, efficient and satisfactory service to its customers.

58. Defendants have knowledge of Overnite's accumulated valuable goodwill and established customer relationships and prospective business relationships.

59. The Defendants's actions and threats were intended to damage Overnite's accumulated valuable goodwill and established customer relationships by making customers and prospective customers fear that the Teamsters would carry out those threats to shut Overnite down and/or put Overnite out of business through acts of trespass, assault, battery, and threats to commit these and other acts.

60. As a direct and proximate result of Defendants's tortious interference with Overnite's business relationships and prospective business relationships, Overnite has suffered and will continue to suffer expectancy damages and compensable losses in an amount to be determined at trial.

COUNT III -- CIVIL CONSPIRACY

61. Overnite hereby realleges and incorporates by reference Complaint Paragraphs 1 through 59.

62. By and through the above described acts, Defendants unlawfully conspired to participate in tortious and criminal acts against Overnite and its agents and employees in order to either force Overnite employees to accept Teamster representation against their will and force Overnite to accept a Teamsters-dictated contract, or put Overnite out of business.

63. In furtherance of their conspiracy, Defendants committed assault, trespass and battery, and made threats to commit these and other unlawful acts in the future.

64. As a direct and proximate result of Defendants's overt acts in furtherance of their conspiracy, Overnite has suffered and will continue to suffer expectancy damages and compensable losses in an amount to be determined at trial.

WHEREFORE Overnite respectfully prays:

1. That this Court award to Overnite compensatory, nominal, and punitive damages in an amount to be determined at trial.

2. That this Court order Defendants to reimburse Overnite for the costs of this lawsuit, including reasonable attorney's fees.

3. That this Court award Overnite such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

OVERNITE TRANSPORTATION COMPANY

By: /s/ Gary N. Savine
One of its Attorneys

Kenneth T. Lopatka
Kenneth F. Sparks
Gary N. Savine
MATKOV, SALZMAN, MADOFF & GUNN
Suite 2900
55 East Monroe Street
Chicago, Illinois 60603-5709
(312) 332-0777

Dated: July 14, 1999

APPENDIX E

Filed: June 23, 1999
National Labor Relations Board, Region 13
Chicago, Illinois

Case No. 13-CB-16123

SECOND AMENDED CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

Labor Organization or its Agents Against Which Charge is Brought:

International Brotherhood of Teamsters, AFL-CIO *and* Teamsters Local Union Nos. 41, 120, 135, 414, 705, 710, 714 and 781, affiliates of the International Brotherhood of Teamsters, AFL-CIO

* * *

Basis of the Charge:

On June 15, 1999, the above-named labor organizations, by their officers, agents and representatives, restrained and coerced employees of Overnite Transportation Company in the exercise of their Section 7 rights by various acts, including, but not limited to, trespassing on Overnite Transportation Company property, by its National Freight Director, Phil Young, and others, assaulting and battering agents of Overnite Transportation Company in the presence of employees of Overnite Transportation Company, and by threatening to close down Overnite Transportation Company if Overnite Transportation Company does not agree to a collective bargaining agreement encompassing all Overnite Transportation Company employees, including those employees not represented by the International Brotherhood of Teamsters or one of its affiliated local unions, and thereby violated Section 8(b)(1)(A) of the Act.

* * *

Full name of party filing charge:

Overnite Transportation Company

* * *

APPENDIX F

Filed: November 18, 1999
National Labor Relations Board, Region 13
Chicago, Illinois

UNITED STATES OF AMERICA
BEFORE THE NATIONAL
LABOR RELATIONS BOARD
REGION 13

Case No. 13-CB-16123

International Brotherhood of Teamsters, AFL-CIO; Teamsters Local Union No. 41, Affiliated with International Brotherhood of Teamsters, AFL-CIO; Teamsters Local Union No. 120, Affiliated with International Brotherhood of Teamsters, AFL-CIO; Teamsters Local Union No. 135, Affiliated with International Brotherhood of Teamsters, AFL-CIO; Teamsters Local Union No. 414, Affiliated with International Brotherhood of Teamsters, AFL-CIO; Teamsters Local Union No. 710, Affiliated with International Brotherhood of Teamsters, AFL-CIO; Teamsters Local Union No. 714, Affiliated with International Brotherhood of Teamsters, AFL-CIO; Teamsters Local Union No. 781, Affiliated with International Brotherhood of Teamsters, AFL-CIO

and

Overnite Transportation Company

COMPLAINT AND NOTICE OF HEARING

Overnite Transportation Company, herein called Overnite, has charged that International Brotherhood of Teamsters, AFL-CIO (herein called the International), Teamsters Local Union No. 41, affiliated with the International (herein called Local 41), Teamsters Local Union No. 120, affiliated with the International (herein called Local 120), Teamsters Local Union No. 135, affiliated with the International (herein called Local 135), Teamsters Local Union No. 414, affiliated with the International (herein called Local 414), Teamsters Local Union No. 710, affiliated with the International (herein called Local 710), Teamsters Local Union No. 714, affiliated with the International (herein called Local 714), Teamsters Local Union No. 781, affiliated with the International (herein called Local 781), and collectively called Respondent, have been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. Section 151 et seq., herein called the Act. Based thereon the General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, issues this Complaint and Notice of Hearing and alleges as follows:

I

(a) The charge in this proceeding was filed by Overnite on June 15, 1999, and a copy was served by certified mail on Respondent on June 22, 1999.

(b) The first amended charge in this proceeding was filed by Overnite on June 17, 1999, and a copy was served by certified mail on Respondent on June 25, 1999.

(c) The second amended charge in this proceeding was filed by Overnite on June 23, 1999, and a copy was served by certified mail on Respondent on July 2, 1999.

II

(a) At all material times Overnite, a corporation, with an office and place of business in Bedford Park, Illinois, herein called Overnite's facility, has been engaged in the transportation and trucking business.

(b) During the last 12 months, Overnite derived gross revenues in excess of $50,000 for the transportation of freight from the State of Illinois directly to points outside the State of Illinois.

(c) At all material times Overnite has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

III

(a) At all material times the International has been a labor organization within the meaning of Section 2(5) of the Act.

(b) At all material times Local 41 has been a labor organization within the meaning of Section 2(5) of the Act.

(c) At all material times Local 120 has been a labor organization within the meaning of Section 2(5) of the Act.

(d) At all material times Local 135 has been a labor organization within the meaning of Section 2(5) of the Act.

(e) At all material times Local 414 has been a labor organization within the meaning of Section 2(5) of the Act.

(f) At all material times Local 710 has been a labor organization within the meaning of Section 2(5) of the Act.

(g) At all material times Local 714 has been a labor organization within the meaning of Section 2(5) of the Act.

(h) At all material times Local 781 has been a labor organization within the meaning of Section 2(5) of the Act.

IV

At all material times Phil Young held the positions of Local 41 President and Officer of the International and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

V

About June 15, 1999, Respondent, at Overnite's facility, in the presence of Overnite's employees:

(a) engaged in mass picketing;

(b) trespassed on Overnite's property;

(c) by, including but not limited to, Phil Young, in the conduct of the picketing activity inflicted injuries upon Overnite's security guards by pushing them and hitting them;

(d) inflicted damage to the vehicle of an Overnite security guard by tearing a side mirror from the vehicle;

(e) prohibited an Overnite employee from performing work by blocking his use of an Overnite vehicle.

VI

By the conduct described above in paragraph V, Respondent has been restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(b)(1)(A) and affecting commerce within the meaning of Section 2(6) and (7) of the Act.

PLEASE TAKE NOTICE that commencing on a date to be determined in the future and on consecutive days thereafter, a hearing will be conducted in Suite 800, 200 West Adams Street, Chicago, Illinois, before an administrative law judge of the Board on the allegations in this

complaint, at which time and place any party within the meaning of Section 102.8 of the Board's Rules and Regulations will have the right to appear and present testimony.

Respondent is further notified that, pursuant to Section 102.20 and 102.21 of the Board's Rules and Regulations, Respondent shall file with the undersigned an original and four (4) copies of an answer to this complaint within 14 days from service of it, and that, unless Respondent does so, all the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board. Respondent is also notified that pursuant to the Board's Rules and Regulations, Respondent shall serve a copy of its answers on each of the other parties.

Form NLRB-4338, Notice, and Form NLRB-4668, Statement of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practices Cases, are attached.

Dated at Chicago, Illinois, this 18th day of November, 1999.

/s/ Elizabeth Kinney

Elizabeth Kinney, Regional Director
National Labor Relations Board
Region 13
200 West Adams Street, Suite 800
Chicago, IL 60606

APPENDIX G

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT-LAW DIVISION

OVERNIGHT [sic] TRANSPORTATION COMPANY,	)	
Plaintiff,	)	
vs.	)	No. 99 L 7779
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,	)	
Defendant.	)	

REPORT OF PROCEEDINGS HAD at the hearing of the above-entitled cause, before the Honorable DIANE J. LARSEN, Judge of said court, on Tuesday, the 1st day of February, 2000, at the hour of approximately 11:15 o'clock a.m.

PRESENT:

MS. JULIA A. MARTIN,
appeared on behalf of the Plaintiff;

MR. MARVIN GITTLER,
appeared on behalf of the Defendant.

* * *

Linda Ann Waliczek
Official Court Reporter
Circuit Court of Cook County, Illinois

Page 28:

* * *

THE COURT: I think we have exhausted the argument on 619, and the Court is going to base its decision on 619(A-3). [sic]

It does not reach the preemption issues, and it does hold that the motion should be granted on the basis of 619(A-3). [sic] That the NLRB action is a prior pending action between the two parties here for essentially the same cause, and all of the elements that are—that this Court is required to consider is articulated by Kellerman, and, therefore, this cause is dismissed.

* * *